IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6875 of 1996

For Approval and Signature:

HON'BLE DR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

LAXMICHAND A KANUDAWALA

Versus

GUJARAT RUARL INDUSTRIAL MARKTING CORP. LTD

Appearance:

1. Special Civil Application No. 6875 of 1996

MR VIPUL S MODI for Petitioner No. 1

MR MB PARIKH for Respondent No. 1-2

CORAM : HON'BLE DR.JUSTICE J.N.BHATT

Date of decision: 18/08/2004

ORAL JUDGEMENT

By this petition, the petitioner workman has questioned

the order of appellate authority passed on 20.7.1996 in appeal No.1/86, under the provisions of Section 32(2) of Bidi Cigar Works Act, 1966, whereby, the petitioner's appeal against the order of his termination from the probationary service, came to be confirmed, while dismissing the appeal.

It is undisputed that the petitioner was engaged by the respondent Gujarat Rural Industries Marketing Corporation Limited (Corporation) on the post of Supervisor (incharge Bidi Karkhana) by passing an order dated 08.2.1984 on the terms and conditions incorporated therein and one of the terms and conditions, clearly, stipulates that the appointment of the petitioner was on temporary basis and initially the petitioner came to be appointed on a probationary period of one year. The Corporation, after the completion of one year probationary period, extended probation period by six months, in pursuance of the condition No.3, whereby, the respondent Corporation has reserved right to extend the probation period beyond the period of one year. Before the completion of extended period of six months of probation, service of the petitioner Supervisor came to be terminated by the Corporation by passing an office order dated 20.12.1985 interalia stating that the petitioner has not completed the probation period satisfactorily and, therefore, on the ground of unsatisfactory period of service during the period of probation, the service came to be terminated with effect from the same date, like that on 20.12.1985.

The petitioner being aggrieved by the order of termination during the probationary period questioned it by filing an appeal before the Labour Court at Ahmedabad. Upon consideration of the facts and circumstances and the legal aspects, the Labour Court, in its capacity, as an appellate authority, dismiss the appeal by a reasoned order and that is how the petitioner workman, has, now, come up before this Court, challenging the legality and the validity of the order of the appelalte court by filing this petition.

Time and again, it has been highlighted that the jurisdictional sweep of the writ Court is very much circumscribed and the anxiety of the Court, while entertaining a petition under the writ jurisdiction is to see, as to whether, the decision making process in any way is affected by extraneous consideration or not, or non observing the principles of natural justice or whether there is apparent, palpable mistake, which has resulted into the miscarriage of justice. Nothing has

been fulfilled or satisfied in this petition, which would prompt this Court to interfere with the order passed by the appellate authority in exercise of its powers under Section 32(2) of the Act.

It was contended that the order of termination is stigmatic and punitive and, therefore, it deserves to be quashed. This submission is meritless for the reason that the plain perusal of the termination order, placed on record, does not indicate even remotely any stigma. Merely because, it is stated in the termination order that the probationary period was not satisfactory, cannot tantamount to or characterized as stigmatic or punitive. The very purpose of keeping a person or employee on a probation period is to see that he carries out or performs his duty during the probation period satisfactorily and in the event of non satisfaction on the part of the management about the working or the performance of the employee, the period of probation can be ended or terminated. This proposition is made amply clear in the service jurisprudence by numerous judicial pronouncement. The very fact that the initial probation period of one year was extended is itself implied suggestive of non satisfaction on the part of the management. Extension of probation period for six months or again granted so that the performance of the workman can be watched and monitored and during that period, management found that the work was not satisfactory and, therefore, the termination order came to be passed within the period of extended probationary period.

The submission that the one month's notice or in lieu thereof salary, stipulated in the appointment order has not been complied with and, therefore, the termination is vitiated. Prima facie, this submission would appear to be very shuttle but not sound and acceptable, as the question of notice in pursuance of the stipulation of the contract of service was not raised before the appellate authority. This question is not pure and simple question of law. Obviously, therefore, it cannot be entertained more so, in a dispute which has taken almost two decades and against a Corporation, which is stated at the Bar, under instructions, to be virtually defunct. Whether there is a breach of the terms and conditions of the employment contract or not, what will be the implication and what will be the legal ramification, nothing be gone into in this petition in view of the peculiar facts and special circumstances. Nothing has been successfully shown or pointed out that the order of termination challenged before the appellate authority and subsequent order of appellate authority is in any way illegal,

perverse or vulnerable. Nothing has been so spelt out from the record.

In the result, the Court has no option but to reject the petition. Accordingly, the petition is rejected leaving the parties to bear their own costs. Rule is discharged. No costs.

[J.N.BHATT, J]

SNS